

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARISE FOR SOCIAL JUSTICE;)
;OISTE?; NEW ENGLAND STATE-AREA)
CONFERENCE OF THE NAACP;)
REV. TALBERT W. SWAN, II;)
NORMAN W. OLIVER; DARLENE)
ANDERSON; GUMERSINDO GOMEZ;)
FRANK BUNTIN; RAFAEL RODRIQUEZ;)
and DIANA NURSE) Civil Action No. 05-30080-MAP
)
Plaintiffs,)
)
v.)
)
)
CITY OF SPRINGFIELD and SPRINGFIELD)
ELECTION COMMISSION)
)
Defendants.)
_____)

**DEFENDANTS' AFFIDAVIT OF DIRECT TESTIMONY
DAN HALL, EQUAL OPPORTUNITY ADMINISTRATOR
CITY OF SPRINGFIELD**

I, Dan Hall, on oath, do hereby state as follows:

Employment and Educational Background

1) My name is Dan Hall and I am the Equal Opportunity Administrator for the City of Springfield. I have held this position for 19 years. I have worked for the City of Springfield for a total of 19 years as the Equal Opportunity Administrator. I was born in Springfield, Ma and was raised outside of Springfield until the age of 14. I returned to Springfield where I graduated from high school. I currently live in Springfield. Springfield] Prior to my employment with the City of Springfield, I worked in Hartford, Ct. five different insurance companies, e.g. Allstate Insurance Company, Aetna /CG Insurance Company, C.N.A. Insurance and Perless Insurance Company. I graduated from Springfield Technical High School and a Bachelor of Arts from Howard University.

Responsibilities of Equal Opportunity Administrator

2) I was appointed to the position of Equal Opportunity Administrator by Mayor Richard E. Neal. I directly report to Marilyn Montagna, Personnel Director and to Gail Walls, Assistant Personnel Director. The primary responsibility of this position is to ensure that the City is in full compliance with all federal, state, and local Equal Employment Opportunity Laws and policies and the City's Affirmative Action goals and commitments are met.

a) It is the responsibility of the Equal Opportunity Administrator to assist in the implementation of the Affirmative Action Plan and to monitor the City's compliance with and progress to the established goals of its Equal Opportunity Policy and Affirmative Action Plan.

b) In addition, as the Equal Opportunity Administrator, I am charged with the responsibility of investigating all instances of noncompliance with the Affirmative Action Plan., including complaints alleging sexual, racial, or disability-based discrimination. I report my findings to the Personnel and the Law Department, with whom I maintain a close liaison.

c) I further have the responsibility for overseeing the development and implementation of the City's Affirmative Action Plan.

d) The Equal Opportunity Administrator is responsible for developing an annual workforce analysis by position, race, sex, handicap, and compensation to facilitate the assessment of the degree to which the City i) has met its employment goals; ii) is underutilizing the women, minorities, and handicap persons in its workforce. This annual analysis assists the Equal Opportunity Administer in setting goals and establishing timetables.

e) The Equal Opportunity Administrator prepares the EEO-4 reports based upon yearly utilization reports submitted by all of the City of Springfield Department heads.

f) As the Equal Opportunity Administrator, I further maintain on a monthly basis, "flow data" regarding applicants, new hires, promotions, and departures. In addition, I maintain yearly data on projected departmental vacancies due to leaves of absence, retirement, resignation, termination, and/or newly created positions.

g) The Equal Opportunity Administrator initiatives and maintains active contact with local minority, female, and disabled groups and organizations in order to encourage members of these groups to apply for municipal government positions

h) The Equal Opportunity Administrator provides, as necessary, recruitment and hiring assistance when needed to obtain and maintain the City's compliance with the Plan and the various state and federal laws, regulations, and requirements

i) I have further assisted in the planning, developing, and implementation of training programs to assist women, minorities, and persons with disabilities employed by the City

j) As the Equal Opportunity Administrator, I have the responsibility to evaluate employment procedures as they pertain to minority group members, women, people with disabilities, and other protected groups and to assists administrative officials in establishing, revising, and maintaining non-discriminatory employment policies and practices.

Non-discrimination Employment Goals and Affirmative Action Plan

3) It has long been the policy of the City of Springfield not to discriminate -- indeed, to take affirmative action to ensure that there is no discrimination -- against any employee

or applicant for employment because of age, race, color, religion, national origin, disability, or political affiliation. Such “affirmative actions” include, but are not limited to, “employment, promotion, demotion, transfer, recruitment, advertising, layoff or termination, rate of pay or other forms of compensation, medical and other benefits and selection of training including apprenticeships.”

4) The City recognizes and assumes the responsibility to affirmatively remedy any specific, identifiable claims of illegal and past discriminatory practices by the City, its various departments and agencies, employees, or agents. It is the City’s goal for the workforce to reflect the racial composition of the work eligible and available population in the City of Springfield where appropriate jobs are available. Likewise, it is the goal of the City for the proportion of women and individuals with disabilities in the City’s workforce to reflect the eligible and available population in the City

5) The City has adopted an Affirmative Action Plan (“Plan”) to implement its policy of equal opportunity in employment. The Affirmative Action Plan is “a positive plan designed to provide equal employment opportunity and an atmosphere of non-discrimination with respect to protected group members.” The Affirmative Action Plan has been provided to all department heads, who are required to brief their respective staffs as to the contents of the plan and affirmative action policy. The Mayor is authorized to impose sanctions appropriate to the violation

6) “The purpose of the Affirmative Action Plan is to set forth goals and timetables designed to recruit, employ, train, and promote protected group members” in order to “fully utilize” such employees.

7) “Goals are projected levels of achievement resulting from analysis of each department, project, program, organization, or agency.” The “nature of goals and timetables” set out in the Affirmative Action Plan reflect i) the degree of underutilization within a specific job classification; ii) the nature, demands, education and experiential requirements of the work for which applicants are sought; iii) the availability of qualified or qualifiable protect group members in the relevant work area; and iv) the availability of positions as determined by turnover, “expansion and contraction of the workforce.”

The establishment of “[s]eparate goals for hiring minorities, people with disabilities, and females” is facilitated by identification of “areas of underutilization.”

a) The Annual Equal Employment Opportunity Commission Survey of Municipal Government (EEO-4) and the annual job vacancy survey provide the basis for the establishment of the “numerical goals” reflected in the Affirmative Action Plan. In this way, the goals are realistic and are based upon the latest employment profiles and projected job openings.

b) Consideration is given to the many “variables affecting the local employment situation at the time that the hiring goals [we]re developed.”

c) These Affirmative Action Plan goals “are applicable on an overall basis as well as by job category and on a departmental [b]asis.”

8) The City has provided – and continues to provide -- notification to the public of its commitment to nondiscriminatory employment practices.

a) All printed advertisements for employment, as well as recruitment brochures and posters have/will bear the notation that the City of Springfield is an “Equal Opportunity Employer”

b) Various minority, disabled and women’s organizations, community agencies, community leaders, secondary schools and college of the City’s Affirmative Action Policy

c) A copy of the Affirmative Action Policy is available for review in the City Hall at the City Clerk’s Office and at the Personnel Department

9) Likewise, the Purchasing Department for the City of Springfield requires that bidders for contracts for good and services have affirmative action plans and are required to submit these plans as well as information regarding the number of minority persons, women, and persons with disabilities work for the bidder. The City of Springfield is committed to supporting and utilizing the services and goods of businesses that do not discriminate and that provide for equal employment opportunities to all persons regardless of race, color, ethnicity, national origin, sex, sexual orientation, religion, and disability.

Procedures and Efforts to Meet Affirmative Action Goals

10) The Equal Opportunity Administrator identifies “targeted” positions based upon “underutilization” information from the Municipal Workforce Quarterly Report. These targeted positions will be opened for an additional ten days beyond the normal positing period or for a total of 24 calendar days.

a) “Underutilization” is defined as “having fewer minorities, persons with a disability or women in a particular job classification than would reasonably . . . be expected by their availability.”

b) Where underutilization is “apparent,” use of i) temporary and provisional appointments to civil service positions; ii) Chapter 778; and iii) selective certification have been and will continue to be utilized to meet the Affirmative Action Plan goals

11) In order to achieve goals of equal employment, the City engages in aggressive recruitment of women, persons with disabilities, and minority person. Affirmative action recruitment efforts include both promotion from within and the hiring of new staff.

a) Affirmative action recruitment sources include organizations that are specifically concerned with equal opportunity in employment for women, minority persons, and persons with disabilities and community and neighborhood action groups that assist in referring minority group members, women, persons with disabilities, and veterans for employment.

b) Affirmative action recruitment sources include employment officers at colleges with significant enrollment of minorities, women, persons with disability, and veterans.

- c) Newspapers and other daily, weekly, or monthly publications, as well as other media assist in "reaching out" to members of the minority community, women, and to persons with disabilities
- d) In addition, affirmative action "recruitment" includes the internal promotion to non-clerical position at higher salary grades and training of the City's clerical and secretarial workers
- e) Among the agencies and organizations that have been and continued to be contacted as recruitment and referral sources include American International College, Dunbar Community Center, Probation Office for Hampden County Superior Court, New England Farm Workers Council, Massachusetts Commission for the Blind, Puerto Rican Cultural Center, Inc, South End Action Committee, Indian Orchard Citizen Council, Springfield Employment Resource Center, Inc, Hampden County Manpower Consortium, Northern Educational Service, Massachusetts Commission for the Deaf/Hard of Hearing, Employment Network Program, Holyoke Community College, Massachusetts Commission Against Discrimination, Comprehensive Employment Opportunities, Vietnam Veterans of America, Solid Rock Community Baptist Church, Church of The Living Christ, Faith Baptist Church, Friendship Baptist Church, Gates of Heaven Church of God in Christ, Holy Temple Church of God in Christ, New England Business Associates, Alden Baptist Church, Bethel African Methodist Episcopal Church, New Bethel Church of God in Christ, First United Church of Jesus Christ, Gardner Memorial AME Zion Church, Greater Love Church of God in Christ, Holy Trinity Church of God in Christ, Lighthouse Church of God in Christ, Mt Calvary Baptist Church, New Hope Church of God in Christ, Revival Time Deliverance Center, St John's Congregational Church, U.C.C., St Peter's Episcopal Church, Third Baptist Church, United House of Prayer for All People, Martin Luther King Jr. Community Church, Mt. Zion Baptist Church, New Hope Pentecostal Church, Shiloh Free Will Baptist Church, St. Marks C.M. Episcopal Church, St. Rachael's Fire Baptist Church, True Vine Pentecostal Church, Wesley United Methodist Church, Massachusetts Rehabilitation Commission, New North Citizen Council, New England Farm Workers Council, Department of Manpower Development for Commonwealth of Massachusetts, Senator Linda Melconian, Pine Point Community Council, Inc., Hampden Rehabilitation Services, Springfield College, Employment Resource Center at Springfield Library, Maple High & Six Corner Council, Memorial Square Citizens Council, Community Enterprise, Old Hill Neighborhood Council, Springfield Viet Center, Springfield Partners for Community Action, Springfield League of Women Voters, Springfield NAACP, Springfield Urban League, Western New England College, Golden Age Club, Springfield Housing Authority, Department of Employment and Training, Future Works, C.R.C. Services, Springfield Technical Community College, Weston Rehab, Massachusetts Career Development Institute, Springfield Housing Authority, Vietnamese American Civic Association, Million Man March Committee, Career Point, Zion Community Baptist Church, Canaan Baptist Church, Shiloh Seventh Day Adventist Church, Spring of Hope Church of God in Christ, Christian Hill Baptist Church, and State Representative Benjamin Swan.

12) That the City has not met its Affirmative Action goals is the product of the lack of appropriately qualified minority applicants and the fact that employment opportunities usually occur when a City employee retires or resigns. Recent appointment have been

made by the Finance Control Board and not been subject to the Affirmative Action procedures, processes, and goals.

Equal Employment Opportunities for City Employees

13) The City is committed to providing to women, members of various ethnic and racial minority groups, persons with disabilities employed by the City equal employment opportunities as are provided to non-minority, non-disabled male employees to participate fully in the terms and privileges of employment.

- a) The terms and privileges of employment require equivalent compensation for comparable work
- b) The terms and privileges of employment require freedom from tests or other selection criteria or procedures in hiring or promotion that are not appropriate or necessary for evaluating job performance or that fail to provide reasonable accommodation to persons with disability.
- c) The terms and privileges of employment require job opportunities in hiring and promotion in all grades available equally to all persons similarly qualified or qualifiable, with reasonable accommodations to persons with disability
- d) The terms and privileges of employment require comparable promotional salary rates for all persons regardless of race, sex, or disability
- e) The terms and privileges of employment require the provision of an equal opportunity to productively demonstrate skills and abilities
- f) The terms and privileges of employment require equal opportunity for promotion and "upward mobility within the City['s] job classification structure
- g) The terms and privileges of employment require freedom from the imposition or application of "characterizations" based on race, color, ethnicity, religion, sex, sexual orientation, age, disability, and/or national origin.
- h) The terms and privileges of employment require job descriptions that accurately reflect essential functions, qualifications, duties, and responsibilities

14) Minority, disabled, or female employees are not required either in pattern or practice to possess higher qualifications or greater experience than those of any non-minority, non-disabled, male incumbent holding a job title of the same grade.

15) The terms and privileges of employment require the inclusion of all employees, regardless of race, ethnicity, disability, sex, religious affiliation, and sexual preference, in City sponsored activities such as training programs, attendance at conferences, tuition assistance, staff meetings, public and community agency contact as a representative of the City, and social and recreational activities.

16) The terms and privileges of employment require that "fringe benefits," including medical, hospital, accident, and retirement benefits and leave, in addition to other terms, conditions, and privileges of employment including sick leave, be available to all employees equally regardless of race, ethnicity, disability, sex, religious affiliation, national origin, and sexual preference.

a) Benefits are available to all employees without regard to the employee's status as "head of the household" or "principal wage earner." Accordingly, "[b]enefits available to the wives and families of male employees. . .[are] available [equally] to the husbands and families of female employees."

b) Group medical insurance coverage has been/will continue to be available regardless of marital status, including parental and adoption leave.

Employee Grievance Procedures

17) An applicant seeking employment may file a written grievance if he/she feels that he/she has been discriminated against while making application for employment and/or during the interview or selection process.

18) It is the City's practice that the investigation of the facts and circumstances related to the allegation of discrimination occurs within 15 days following receipt of the grievance.

19) The aggrieved person retains the right to simultaneously file a complaint with the Massachusetts Commission Against Discrimination (MCAD) and/or the Equal Employment Opportunity Commission (EEOC). The MCAD automatically files the complaint with the EEOC within 180 days of the incident, as to which complaints of discrimination have been raised.

20) Any grievance or allegation of discrimination on account of race, age, sex, religion, sexually orientation, national origin, disability in the City's procedures and practices related to recruitment, employment, promotion, transfer, demotion, lay-off, termination, compensation, selection for training, and any other employment "condition" can be brought to the Equal Opportunity Administrator by the aggrieved persons ("with or without Union representation").

21) The Equal Opportunity Administrator is charged with the responsibility of investigating every grievance and seeking conciliation with the appropriate City supervisory persons, commission, department, or agent where there is a reasonable basis for concluding that a violation exists

22) A City employee seeking relief through any grievance procedure established by state or federal law has not been and will not be subject to reprisal, intimidation, or harassment in any terms, conditions, or privileges of employment.

Castro v. Beecher; Affirmative Action Plan for Police Department

23) Castro v. Beecher, C.A. No. 70-1220-W; C.A. No. 74-2982-C (July 2, 1975), Consent Decree, began as a challenge to the civil service exam, which established eligibility list for hiring for the Boston police and fire department. The City of Springfield and other jurisdictions required to use the civil service exam to establish applicant eligibility for their police and fire departments were joined as Defendants. It was shown that African American and Hispanic candidates for employment were disproportionately failing the civil service police examination that was being administered in the early 1970s.

24) The Castro v. Beecher consent decree established eligibility for the police and fire departments based upon race or ethnicity and passage of an interim police examination. Accordingly, pursuant to Grutter v. Bollinger, 539 U.S. 306 (2003) there is little doubt that the racial quota aspect of the consent decree has been rendered unconstitutional.

25) In addition, the civil service administrator was ordered to draft another examination and "cut-off" scores for the previously administered exam were established by agreement of the parties and were presumably established to include a greater proportion of minority applicants

26) The Director of Civil Service ("Director") was ordered to adopt an "affirmative program to recruit Black and Spanish sur-named applicants," which would "include public statements, advertising in the media of press, radio, and television, direct contact with minority organizations." In addition the Director of Civil Service was ordered to provide training for minority candidates to assist minority candidates to pass the examination. The Director was further ordered to provide Spanish sur-named applicant to take the exam in Spanish, providing that they took and passed "a literacy test to demonstrate ability to read and write the English language."

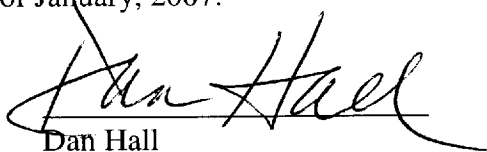
27) While jurisdictions (including Springfield) were required to hire racial minorities in proportion to their membership in the jurisdiction's population and would be subject to the terms of the consent decree until this condition was met, the suit challenged the civil service exam that determined eligibility for hiring – and not individual hiring practices over which each jurisdiction had control. That the Springfield Police Department has not met that goal is attributable in part to the lack of a sufficient number of qualified applicants and the fact that the proportion minority persons has rapidly increased during a period when there was limited recruiting for the Police Academy. Nevertheless, the Police Department – as the City – is committed to a Police Force that fairly reflects the diversity of the population that it serves.

Affirmative Action Plan, Purchasing Department

28) In addition procedures adopted by the Purchasing Department regarding the award of bids for goods and services require the submission of an Affirmative Action Plan and appropriate consideration of those businesses that are owned and/or operated by minorities and women.

29) The Purchasing Department has further provided guidance and instructions of the City's contract compliance, including instructions to prospective bidders of Affirmative Action and Equal Opportunity requirements

Signed under the penalties of perjury this 21 day of January, 2007.


Dan Hall